Parental Rights
Procedural Safeguards Notice
School Year 2005-2006

As a result of the December 3, 2004 amendments to the Individuals with Disabilities Education Act (IDEA 2004), parental rights in special education have been revised**. Until final regulations are issued by the U.S. Department of Education implementing the new law, this document will be used to notify you of your rights under IDEA 2004.** Please review them carefully and if you have questions or need assistance in understanding the provisions of the state's special education rules, contact any of the organizations listed at the end of this document or contact your local school district's superintendent or designee.

Prior Notice

You will be notified in writing if the district proposes or refuses to change your child's special education program. The notice must be understandable. You must receive notice of placement committee meetings 5 (five) days prior to the meeting being held.

The district must provide you with written notice whenever they propose to initiate or change or refuse to initiate or change the identification, evaluation or educational placement of your child or the provision of a free appropriate public education to your child. If parental consent is required as part of the action proposed by the district, the district may give notice at the same time your consent is being requested.

The notice must include:

1. A full explanation of all the procedural safeguards available to you;
2. A description of the action proposed or refused by the district;
3. An explanation of why the district proposes or refuses to take the action;
4. A description of any other options that the IEP team considered and the reasons why those options were rejected;
5. A description of each evaluation procedures, assessment, record, or report the district used as a basis for the proposed or refused action;
6. A description of any other factors that are relevant to the district's proposal or refusal; and
7. A statement that the parents of a child with a disability have protections under the procedural safeguards of Part B of IDEA and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained.

A copy of the procedural safeguards will be given to you one time per year. A copy must also be given to you:

1. Upon initial referral or your request for evaluation;
2. Upon a request by you; and
3. Upon the first occurrence of the filing of a request for a due process hearing.

A district may place a current copy of the procedural safeguards notice on its internet website if a website exists.

A parent of a child with a disability may elect to receive notices required in this document regarding prior notice, procedural safeguards notice, and due process complaint by an electronic mail communication if the district makes that option available.

Definitions

"Consent" means that the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication. The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.
If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

"Evaluation" means procedures used in accordance with federal regulations of procedures for evaluations and determination of eligibility to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

"Personally identifiable" means that information includes-

1. The name of the child, the child's parent, or other family member;
2. The address of the child;
3. A personal identifier, such as the child's social security number or student number; or
4. A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

Parental Consent

Your written permission is required before your child is initially evaluated, reevaluated, or placed in special education.

The district must obtain your informed consent before your child is initially evaluated, reevaluated or initially placed into a program providing special education and related services. In conducting reevaluations, informed parental consent need not be obtained if the district can demonstrate that it has taken reasonable measures to obtain parental consent and the parent has failed to respond. To meet the "reasonable measures" requirement, the district must have a record of its attempts to obtain parental consent, such as:

1. Detailed records of telephone calls made or attempted and the results of those calls;

2. Copies of correspondence sent to the parents and any responses received; and
3. Detailed records of visits made to the parent's home or place of employment and the results of those visits.

Parental consent for evaluation shall not be construed as consent for placement into a special education program.

The district may initiate an impartial due process hearing or mediation to determine if the child may be evaluated or reevaluated without parental consent. If the district does so, and the hearing officer upholds the district, the district may evaluate or reevaluate the child without the parent's consent, subject to the parent's rights under administrative appeal.

Parental consent is not required before:

1. Reviewing existing data as part of an evaluation or reevaluation; or
2. Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

A district may not use a parent's refusal to consent to one service or activity under this section to deny the parent or child any other service, benefit, or activity of the district, except as required by state rule.

Independent Educational Evaluation

If you disagree with the school's evaluation of your child, you can request an independent evaluation (IEE). This type of evaluation is one which is conducted by a qualified person who is not employed by the school district.

An independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the district responsible for the education of your child. Public expense means that the district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent. At your request for an IEE, the district will provide you with information about where an IEE may be obtained, and the district criteria applicable for independent educational evaluations.

You have the right to an independent educational evaluation at public expense if you disagree with an evaluation obtained by the district. If you request an independent educational evaluation at public expense, the district must, without unnecessary delay either initiate a hearing to show that its evaluation is appropriate or insure an independent educational evaluation is provided at public expense unless, through the hearing process, the district demonstrates that the evaluation obtained by the parent did not meet district criteria. If the district initiates a hearing and the final decision is that the districts evaluation is appropriate, you still have the right to an independent educational evaluation, but not at public expense.

If you request an independent educational evaluation, the district may ask you for the reason why you object to the public evaluation. However, the explanation by you may not be required and the district may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

If you obtain an independent educational evaluation at private expense, the results of the evaluation must be considered by the district, if it meets district criteria, in any decision made with respect to the provision of a free appropriate public education to your child. The results of the evaluation may be presented as evidence at a hearing under this state rule regarding your child.

If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner must be the same as the criteria that the district uses when it initiates an evaluation to the extent those criteria are consistent with the parent's right to an independent educational evaluation. Except for the criteria described above, the district may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

Opportunity to Examine Records;
Parent Participation in Meetings

As the parent of a child in need of special education or special education and related services, you have the right to see all education records pertaining to your child. You must be invited to meetings where the identification, evaluation or placement of your child is discussed. You must also be invited to participate in meetings held where there is discussion regarding the provision of a free appropriate public education for your child.

As a parent of a child with a disability, you must be afforded the opportunity to inspect and review all education records that relate to the identification, evaluation and educational placement of your child, and the provision of a free appropriate public education for your child. You must be afforded the opportunity to participate in meetings that pertain to the identification, evaluation and education placement of your child, and the provision of a free appropriate public education to your child.

The district shall provide notice to you which ensures that you have the opportunity to participate in meetings. The notice will inform you of the purpose, time, and location of the meeting, who will be in attendance, and your ability to invite other individuals who have knowledge or special expertise about your child. The term "meetings" does not include informal or unscheduled conversations involving district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision, if those issues are not addressed in your child's IEP. The term "meetings" also does not include preparatory activities that district personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

The district shall ensure that you are members of any group that makes decisions on the educational placement of your child. If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of your child, the district shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

To ensure your involvement in placement decisions, the district shall afford you the opportunity to participate in meetings including:

1. Notifying you of the meetings early enough to ensure that you will have an opportunity to attend; and
2. Scheduling the meeting at a mutually agreed on time and place.

A placement decision may be made by a group without your involvement, if the district is unable to obtain your participation in the decision. In this case, the district must have a record of its attempt to ensure your involvement, including information that is consistent with the requirements of parent participation in meetings. (i.e., records of telephone calls, correspondence, and home visits).

The district shall make reasonable efforts to ensure that you understand and are able to participate in any group discussion relating to the educational placement of your child, including arranging for an interpreter for parents with deafness or whose native language is other than English.

Access to Educational Records

You have the right to see or request copies of all your child's school records. If you disagree with items in the records, you can request that they be changed or removed.

Definitions as used in this section -

"Destruction" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

"Education records" means the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974).

"Participating agency" means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the IDEA.

Special Education Programs shall give notice that is adequate to fully inform parents about the requirements of the confidentiality of personally identifiable information, including:

1. A description of the extent that the notice is given in the native languages of the various population groups in the state;
2. A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the state intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
3. A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and
4. A description of all rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act of 1974, and implementing regulations in 34 CFR part 99.

Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media or both, with circulation adequate to notify parents throughout the state of the activity.

The district must permit you to inspect and review any education records relating to your child which are collected, maintained or used by the district for the purposes of providing special education. The district must comply with your request without unnecessary delay and before any meeting regarding an individualized education program (IEP), hearing relating to discipline or hearing relating to the identification, evaluation, or education placement of your child or the provision of a free appropriate public education to your child. The district may not take more than 45 days to comply after the request has been made.

Your right to inspect and review records under this section includes:

1. The right to a response from the district to reasonable requests for explanations and interpretations of the records;
2. The right to request that the district provide copies of the records containing the information if failure to provide these copies would effectively prevent you from exercising your right to inspect and review the records;
3. The right to have your representative inspect and review the records.

The school district may presume that you have authority to inspect and review records relating to your child unless the district has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

The district must keep a record of parties obtaining access to the record collect, maintained or used under special education (except access by you or authorized school personnel) including the name of the party, the date access was given and the purpose for which access to the records was given to the party.

If any education records include information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

The district shall provide parents, upon request, a list of the types of records and the locations of those records collected, maintained and used by the district.

A fee may be charged by the district for copies of records that are made for parents, if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. The district may not charge a fee to search for or retrieve information.

Except as to disclosures addressed in "Discipline" for which parental consent is not required by FERPA, your consent must be obtained before personally identifiable information is disclosed to anyone other than officials of the district collecting or using the information for the purposes of the provision of special education, or is used for any other purpose than meeting a requirement of special education.

The school district may not release information from education records subject to FERPA (Family Educational Rights and Privacy Act) 34 CFR part 99 to participating agencies without parental consent unless authorized to do so under FERPA.

If the parents refuse consent for the release of personally identifiable information to a third party, the district may proceed with the due process hearing procedures in an effort to obtain the desired information.

The district shall protect the confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages. One person at the district shall assume responsibility for ensuring the confidentiality of any personally identifiable information. All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures regarding confidentiality of personally identifiable information and FERPA. The district shall maintain, for public inspection, a current listing of the names and positions of those employees within the district who may have access to personally identifiable information. The district shall inform you when personally identifiable information collected, maintained or used for special education and related services is no longer needed to provide educational services to your child. The information must be destroyed at your request, however, a permanent record of your child's name, address, phone number, his or her own grades, attendance record, classes attended, grade level completed and year completed may be maintained without time limitation.

Special Education Programs shall provide policies and procedures regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability. In addition, Special Education Programs shall provide polices and procedures, including sanctions that the State uses to ensure that its policies and procedures are followed and that the requirements of the IDEA and its implementing regulations are met.

Under the regulations for the Family Educational Rights and Privacy Act of 1974 (34 CFR 99.5(a)), the rights of parents regarding education records are transferred to the student at age 18. If the rights accorded to parents under Part B of the IDEA are transferred to a student who reaches the age of majority, the rights regarding educational records must be transferred to the student. However, the district must provide any notice required under section 615 of the IDEA to the student and the parents.

The State may require that a district include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children. The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken and any other information that is relevant to the safety of the child and other individuals involved with the child. If the State adopts such a policy and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current individualized education program and any statement of current or previous disciplinary action that has been taken against the child.

If the U.S. Department of Education or its authorized representatives collect any personally identifiable information regarding children with disabilities that is not subject to FERPA, the Secretary of Education shall apply comparable federal regulations.

Amendment of Records at Parent's Request

If you believe the information in the education records collected, maintained or used for the purposes of providing special education and related services is inaccurate or misleading or violates the privacy or other rights of your child, you may request the district that maintains the information to amend the information.

The district shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. If the district decides to refuse to amend the information in accordance with the request, it shall inform you of the refusal, and advise you of your rights to a hearing as described below.

The district shall, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

If, as a result of the hearing, the district decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing. If as a result of the hearing, the district decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy of other rights of the child, it shall inform you of the right to place in the records it maintains of the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

Any explanation placed in your child's records must be maintained by the district as part of the records of your child as long as the record or contested portion is maintained by the district; and if the records your child or the contested portion is disclosed by the district to any party, the explanation must also be disclosed to the party.

Children Placed in Private Schools by Their Parents if FAPE is at Issue

Parents who place their children in private schools for the purposes of receiving special education or special education and related services could be awarded reimbursement for educational costs if a court or hearing officer determined that the school district was not providing a free appropriate public education (FAPE).

A school district is not required to pay the cost of education, including special education and related services, of a child with a disability at a private school or facility if the district made a free appropriate public education available to the child and you still elected to place the child at the private school or facility. However, the district shall include your child in the population whose needs are addressed through private school enrollment where FAPE is not at issue.

Disagreements between you and the district regarding the availability of an appropriate program for your child and the question of financial responsibility are subject to the due process procedures found within this document.

If you enroll your child, who previously received special education and related services through your school district, in a private preschool, elementary or secondary school without the consent of or referral by the district, a court or hearing officer may require the district to reimburse you for the cost of that enrollment if the court or hearing officer finds that the district had not made FAPE available to your child in a timely manner prior to that enrollment, and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the State Special Education Programs and school districts.

The cost of reimbursement described in the above paragraph may be reduced or denied if-

1. At the most recent IEP meeting you attended prior to the removal of your child from the public school, you did not inform the IEP team that you were rejecting the placement proposed by the district to provide FAPE to your child, including stating your concerns and intent to enroll your child at a private school at public expense; or at least ten (10) business days (including any holidays that occur on a business day) prior to the removal your child from the public school, you did not give written notice to the district of your rejection of the placement proposed by the district, including stating your concerns and intent to enroll your child in a private school at public expense.
2. If, prior to your removal of your child from the public school, the district informed you through notice of its intent to evaluate your child (including a statement of the purpose of

the evaluation that was appropriate and reasonable) but you did not make the child available for the evaluation; or
3. Upon a judicial finding of unreasonableness with respect to actions taken by you.

The cost of reimbursement may not be reduced or denied for failure to provide the notice if-

1. You are unable to read and cannot write in English;
2. Compliance with this section would likely result in physical or serious emotional harm to your child;
3. The school prevented you from providing the notice; or
4. You did not receive the notice of the requirement to provide written notice to the district.

Placement in Alternative Educational Settings

Discipline for students in need of special education has been defined in very specific terms. The issues surrounding the problem behavior and the reasons for the problem behavior are considered in depth when making discipline decisions for students in need of special education.

School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.

For purposes of removals of a student with a disability from the student's current educational placement under a district's discipline procedures, a change of placement occurs if:

1. The removal is for more than 10 consecutive days; or
2. The student is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.

To the extent removal would be applied to students without disabilities, school personnel may remove a student with a disability from the student's current placement for not more than 10 consecutive school days for any violation of school rules, and additional removals of not more than 10 consecutive days in that same school year for separate incidents of misconduct as long as those removals do not constitute a change of placement.

A school district need not provide services during period of removal to a student with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if services are not provided to a student without disabilities who has been similarly removed.

In the case of a student with a disability who has been removed from his or her current placement for more than 10 school days in that school year, as described above, the district for the remainder of the removals, shall provide services to the extent necessary to enable the student to

continue to participate in the general education curriculum, although in another setting, and progress toward meeting the goals set out in the student's IEP. School personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed under this section, if any, and the location in which services, if any, will be provided.

For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except that:

1. A child with a disability who is removed from the child's current placement pursuant to this section must continue to receive educational services, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and
2. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

If the removal is for more than 10 consecutive school days or is a change of placement under these procedures, the child's IEP Team determines appropriate services and the location in which services will be provided.

Interim alternative educational setting, referred to in this section and under special circumstances, is determined by the IEP team.

Manifestation Determination

Except for removals that will be for not more than 10 consecutive school days and will not constitute a change of placement under these procedures, within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the district, the parent, and relevant members of the child's IEP Team (as determined by the parent and the district) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

1. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
2. If the conduct in question was the direct result of the district's failure to implement the IEP.

The conduct must be determined to be a manifestation of the child's disability if the district, the parent, and relevant members of the child's IEP Team determine that a condition in either (1) or (2) above was met.

If the district, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must:

1. Either:
    a. Conduct a functional behavioral assessment, unless the district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or
    b. If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

2. Except as provided in cases of “special circumstances” (i.e. weapons, drugs) return the child to the placement from which the child was removed, unless the parent and the district agree to a change of placement as part of the modification of the behavioral intervention plan.

Special Circumstances

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child:

1. Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an district;
2. Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a district; or
3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a district.

For the purposes of this section the district uses the federal definitions of controlled substance, illegal drug, serious bodily injury and weapon.

Notification

Not later than the date on which the decision to take disciplinary action is made, the district must notify the parents of that decision, and provide the parents the procedural safeguards notice described in this document.

Appeal

The parent of a child with a disability who disagrees with any decision regarding placement under these procedures, or the manifestation determination, or a district that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may request a hearing.

A hearing officer hears, and makes a determination regarding, an appeal requested under this section.

In making the determination under this section, the hearing officer may:

1. Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of these procedures or that the child's behavior was a manifestation of the child's disability; or
2. Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

The procedures under this section may be repeated, if the district believes the child would be dangerous if returned to the original placement.

When an appeal under these procedures has been requested by either the parent or the district, the child must remain in the interim alternative educational setting, pending the decision of the hearing officer or until the expiration of the time period provided for regarding a change in placement including under special circumstances, whichever occurs first, unless the parent and the district agree otherwise.

Procedures for Children Not Yet Eligible for Special Education and Related Services

A child who has not been determined to be eligible for special education and related services, and who has engaged in behavior that violate any rule or code of conduct of the school district, may assert any of the protections provided for under this part if the district had knowledge (as determined in accordance with the following information) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

A school district must be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred:

1. The parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;
2. The parent of the child has requested an evaluation of the child; or
3. The teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the district or to other supervisory personnel of the district in accordance with the district’s established child find or special education referral system.

A district would not be deemed to have knowledge under this section if:

1. The parent of the child:
    a. Has not allowed an evaluation of the child consistent with state rule; or
    b. Has refused services under Part B of IDEA; or
2. The child has been evaluated and determined to not be a child with a disability under Part B of IDEA.

If a district does not have knowledge that the child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measure as the measures applied to children without disabilities who engaged in comparable behaviors.

If a request is made for an evaluation of a child during the time period in which a child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner. Until the evaluation is completed, the child remains in the educational placement determined by school authorities which can include suspension or expulsion without educational services. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the district and information provided by the parents, the district shall provide special education and related services to the child in accordance with all the provisions of Part B of the IDEA including the disciplinary provisions.

Expedited Due Process Hearings

Expedited due process hearings must:

1. Occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing;
2. Meet the requirements for impartial due process hearings, except that the State may provide that the time periods identified for prohibiting the introduction of any evidence and disclosure of all evaluations for a due process hearing, for the purposes of expedited due process hearings are not less than two business days; and
3. Be conducted by a due process hearing officer who satisfies the requirements of impartial due process hearing officer;
4. The decisions on expedited hearings are subject to civil action.

Nothing in this part prohibits a school district from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability. A district reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime.

A school district reporting a crime under this section may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

Complaints

If you believe the school district has violated a federal or state regulation, you may file a complaint with Special Education Programs. Upon receiving your written complaint, an investigation will be completed.

A complaint is a written signed statement by an individual or organization, including a complaint filed by an individual or organization from another state containing a statement that the state education agency or a school district has violated a requirement of federal or state statues or regulations that apply to a program and a statement of the facts on which the complaint is based. In resolving the complaint in which the State Special Education Programs has found a failure to provide appropriate services, the State Special Education Programs, pursuant to its general supervisory authority under Part B of the IDEA, must address:

1. How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child; and
2. Appropriate future provision of services for all children with disabilities.

The secretary of the Department of Education appoints a complaint investigation team from the State Special Education Programs. The team may conduct an on-site investigation if it determines that one is necessary. The complaint team shall give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint. The complaint team makes a recommendation to the secretary, and after reviewing all relevant information, the secretary shall determine whether the complaint is valid. The secretary shall submit a written report of the final decision to all parties involved, including findings of fact, conclusions, and reasons for final decision.

All complaints must be resolved within 60 calendar days after the receipt of the complaint by the secretary as stated in this section. An extension of the 60 day time limit may be granted only if exceptional circumstances exist with respect to a particular complaint.

If a written complain is received that is also the subject of a due process hearing, or contains multiple issues, of which one or more are part of that hearing, the State Special Education Programs must set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in this section.

If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties:

1. The hearing decision is binding; and
2. The State Special Education must inform the complainant to that effect.

A complaint alleging a district's failure to implement a due process hearing decision must be resolved by the State Special Education Programs.

Resolution Session

A resolution session provides the district with an opportunity to resolve a parent's complaint without going through an impartial due process hearing.

Within 15 days of receiving notice of the parents' due process complaint, and prior to the opportunity for a due process hearing, the district must convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that:

1. Includes a representative of the district who has decision-making authority on behalf of the district; and
2. May not include an attorney of the district unless the parent is accompanied by an attorney.

The purpose of the meeting is for the parents of the child to discuss their due process complaint, and the facts that form the basis of the due process complaint, so that the district has the opportunity to resolve the compliant.

The meeting described above need not be held if:

1. The parents and the district agree in writing to waive the meeting; or
2. The parents and the district agree to use the mediation process described in this document.

If the district has not resolved the due process complaint to the satisfaction of the parents within 30 days of the receipt of the due process complaint, the due process hearing must occur and all applicable timelines for a due process hearing shall commence.

Except where the parties have jointly agreed to waive the resolution process or to use mediation, the failure of a parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

If a resolution to the dispute is reached at the meeting described above, the parent and district must execute a legally binding agreement that is:

1. Signed by both the parent and a representative of the agency who has the authority to bind the district; and
2. Enforceable in any State court of competent jurisdiction or in a district court of the United States.

If the parent and district execute an agreement, either may void the agreement within 3 business days of the agreement's execution.

Mediation

Mediation is an effective way to resolve differences between you and the school district. Mediation is free and conducted by someone who is not employed by the school district.

The State shall ensure that procedures are established and implemented to allow parties to disputes involved in the proposal to initiate or change the identification, evaluation or education placement of the child or the provision of a free appropriate public education to the child, including matters that arise prior to the filing of a due process hearing, to resolve the disputes through a mediation process.

The mediation procedures must ensure that participation is voluntary on the part of the parties. Mediation may not be used to deny or delay the parent's right to a due process hearing or to deny any other rights afforded under Part B of the Act. It must be conducted by a qualified and impartial mediator who is trained in effective mediation techniques. Mediators are selected on a random basis.

The State Special Education Programs shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. An individual who serves as a mediator may not be an employee of the school district or State agency providing services to the child. They must not have a personal or professional conflict of interest. The State will bear the cost of the mediation process. A person who otherwise qualifies as a mediator is not an employee of a district or State agency solely because he or she is paid by the State Special Education Programs to serve as a mediator.

Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute. An agreement reached by the parties to the dispute in the mediation must be set forth in a written mediation agreement.

Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings. The parties to the mediation process may be required to sign a confidentiality pledge prior to the beginning of the process.

If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that:

1. States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding arising from that dispute; and
2. Is signed by both the parent and a representative of the district who has the authority to bind such district.

A written, signed mediation agreement under this section is enforceable in any State court of competent jurisdiction or in a district court of the United States.

If you choose not to use the mediation process, the school district or a State agency providing services to the child may establish procedures to offer you and to the district an opportunity to meet, at a time and location convenient to you, with a disinterested party, to encourage the use and explain the benefits of the mediation process to you. This party may be under contract with a parent training and information center, community parent resource center established in the state or with an appropriate alternative dispute resolution entity.

Due Process Complaint Notice

> *A parent, district, or an attorney representing either party must file a notice that meets the requirements for a "due process complaint notice" in order to have a due process hearing.*

The district must have procedures that require either party, parent or district, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential).

The party filing a due process complaint must forward a copy of the due process complaint to the State Special Education Programs.

The due process complaint notice must include:

1. The name of the child;
2. The address of the residence of the child;
3. The name of the school the child is attending;
4. In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;
5. A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
6. A proposed resolution of the problem to the extent known and available to the party at the time.

The State Special Education Programs has developed a model form to assist parents in filing a compliant and due process complaint notice.

A party, parent or district, may not have a hearing on a due process complaint or engage in a resolution session until the party, or the attorney representing the party, files a due process complaint that meets the requirements of this section.

The due process complaint required by this section must be deemed sufficient unless the party, parent or district, receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements of this section.

Within five days of receipt of the above notification, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of this section, and must immediately notify the parties in writing of that determination.

A party may amend its due process complaint only if:

1. The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a resolution session; or
2. The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.

The applicable timeline for a due process hearing under Part B shall recommence at the time the party files an amended notice, including the timeline for a resolution session.

If the district has not sent a prior written notice under Part B of IDEA to the parent regarding the subject matter contained in the parent's due process complaint, the district must, within 10 days of receiving the due process complaint, send to the parent a response that includes:

1. An explanation of why the district proposed or refused to take the action raised in the due process complaint;
2. A description of other options that the IEP Team considered and the reasons why those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report the district used as the basis for the proposed or refused action; and
4. A description of the other factors that are relevant to the district’s proposed or refused action.

A response by a district under this section shall not be construed to preclude the district from asserting that the parent's due process complaint was insufficient, where appropriate.

Except as provided above, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

Impartial Due Process Hearings

If you are unable to resolve your differences through a resolution session, or the mediation process, a due process hearing will be held. This hearing is a legal process in which both parties present their differing viewpoints to a hearing officer. The hearing officer writes a finding of fact and decision based on the information presented by both parties..

You or the school district may initiate a hearing on any matters relating to the identification, evaluation or educational placement of your child or the provision of a free appropriate public education to your child.

The party, parent or district, requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint unless the other party agrees otherwise.

When a hearing is initiated, the district shall inform you of the availability of mediation. If you are requesting a hearing or request information on any free or low-cost legal services, the district shall inform you of it and any other relevant services available in the area.

A parent or district must request an impartial hearing on their due process complaint within two years of the date the parent or district knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing under Part B of IDEA, in the time allowed by State law.

The timeline described above does not apply to a parent if the parent was prevented from filing a due process complaint due to:

1. Specific misrepresentations by the district that it had resolved the problem forming the basis of the due process complaint; or
2. The district's withholding of information from the parent that was required under Part B of IDEA to be provided to the parent.

At a minimum, a hearing officer:

1. Must not be:
    a. An employee of the State Department of Education or the district that is involved in the education or care of the child; or
    b. A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;
2. Must possess knowledge of, and the ability to understand, the provisions of IDEA, Federal and State regulations pertaining to IDEA, and legal interpretations of IDEA by Federal and State courts;
3. Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
4. Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

A person who otherwise qualifies to conduct a hearing under this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer. The State Special Education Programs and district shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

Any party to a hearing has the right to:

1. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
2. Present evidence and confront cross-examine, and compel the attendance of witnesses;
3. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 business days before the hearing;
4. Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and
5. Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

At least 5 business days prior to a hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

A hearing officer may bar any party that fails to comply with the disclosure requirements of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

As a parent involved the hearings, you have the right to:

1. Have the child who is the subject of the hearing present; and
2. Open the hearing to the public.

Subject to this section, a hearing officer must make a decision on substantive grounds based on a determination of whether the child received a FAPE.

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies:

1. Impeded the child's right to a FAPE;
2. Significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' child; or
3. Caused a deprivation of educational benefit.

Nothing in this section shall be construed to preclude a hearing officer from ordering a district to comply with procedural requirements in this document.

Nothing in this section shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

The record of the hearing and the findings of fact and decisions must be provided at no cost to you.

The State Special Education Programs, after deleting any personally identifiable information, shall transmit the findings and decisions to the State advisory panel, and make those findings and decisions available to the public.

A decision made in a hearing is final, except that any party involved in the hearing may appeal the decision through civil action.

The State Special Education Programs and district shall ensure that not later than 45 days after the expiration of the 30 day period regarding a resolution session:

1. A final decision is reached in the hearing; and
2. A copy of the decision is mailed to each of the parties.

Civil Actions

Any party aggrieved by the findings or decisions made through the hearing process has the right to bring a civil action with respect to the complaint presented in the hearing. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount of controversy.

The party, parent or district, bringing the action shall have 90 days from the date of the decision of the hearing officer to file a civil action, or, if the State has an explicit time limitation for bringing civil actions under Part B of the Act, in the time allowed by State law.

In any action brought under this section, the court:

1. Shall receive the records of the administrative proceedings;
2. Shall hear additional evidence at the request of a party ; and
3. Basing its decision on the preponderance of the evidence, shall grant the relief that the court determines to be appropriate.

The district courts of the United States have jurisdiction of actions brought under section 615 of the IDEA without regard to the amount in controversy. Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the IDEA, the due process hearing procedures must be exhausted to the same extent as would be required had the action been brought under section 615 of the IDEA.

Attorneys' Fees

In any action or proceeding brought under section 615 of the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to:

1. The prevailing party who is the parent of a child with a disability;

2. A prevailing party who is the State Department of Education or the district against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
3. The prevailing State Department of Education or district against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

Funds under Part B of the IDEA may not be used to pay attorneys' fees or costs of a party related to an action or proceeding under section 615 of the IDEA and state rule.

This section does not preclude a district from using funds under Part B of the IDEA for conducting an action or proceeding under section 615 of the IDEA.

A court awards reasonable attorney's fees under section 615 of the IDEA consistent with the following.

Fees awarded under section 615 of the IDEA must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this section.

Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceedings under section 615 of the IDEA for services performed subsequent to the time of a written offer of settlement to a parent if:

1. The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceedings, at any time more than 10 days before the proceedings begins;
2. The offer is not accepted within 10 days; and
3. The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State Special Education Programs for a mediation that is conducted prior to the filing of a request for a due process hearing in accordance with this document.

A resolution session shall not be considered:

1. A meeting convened as a result of an administrative hearing or judicial action; or
2. An administrative hearing or judicial action for purposes of this section.

Notwithstanding the above provisions, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

Except as provided in this section, the court reduces, accordingly, the amount of the attorney's fees awarded under section 615 of IDEA, if the court finds that:

1. The parent, during the course of the action or proceedings, unreasonably protracted the final resolution of the controversy;
2. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;
3. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
4. The attorney representing the parent did not provide to the school district the appropriate information in the due process complaint in accordance with this section.

The above provisions do not apply in any action or proceedings if the court finds that the Division or district unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the IDEA.

Maintenance of Current Educational Placement

Pending any administrative or judicial proceeding regarding a complaint, unless the district and parents of the child agree otherwise, the child involved in the complaint shall remain in their current educational placement. Or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed. This section applies to all proceedings with exceptions as provided under placements in alternative educational settings.

If the decision of a hearing officer in a due process hearing conducted by the State Special Education Programs agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the district and the parents for the purposes of pendency.

Surrogate Parents

If a child's parents cannot be identified, if the district, after making reasonable effort, is unable to discover the location of the parent, or if the child is an unaccompanied homeless youth, or if the child is a ward of the State, an individual must be assigned by the school district to act in the role of parent.

The term "parent" means a natural or adoptive parent, a foster parent, unless State law, prohibits a foster parent from acting as a parent, a guardian, a person acting as a parent of a child (such as grandparent or stepparent with whom the child lives, as well as persons legally responsible for

the child's welfare), or a surrogate who has been appointed under these procedures. This term does not include the State if the child is a ward of the State.

Subject to this section, ward of the State means a child who, as determined by the State where the child resides, is:

1. A foster child;
2. A ward of the State; or
3. In the custody of a public child welfare agency.

Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent as described above.

In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate meets the requirements of this section.

The district must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after the district determines that the child needs a surrogate.

The district shall ensure that the rights of a child are protected if:

1. No parent can be identified;
2. The district, after reasonable efforts, cannot locate the parents;
3. The child is a ward of the State under the laws of South Dakota; or
4. The child is an unaccompanied homeless youth as defined in the McKinney-Vento Homeless Assistance Act.

The duty of the district to assign an individual to act as a surrogate for the parents must include a method:

1. For determining whether a child needs a surrogate parent; and
2. For assigning a surrogate parent to the child.

The district may select a surrogate parent in any way permitted under State law. The district shall ensure that a person selected as a surrogate:

1. Is not an employee of the State Special Education Programs, school district, or any other agency that is involved in the education or care of the child;
2. Has no interest that conflicts with the interest of the child he or she represents; and
3. Has knowledge and skills that ensure adequate representation of the child.

A district may select as a surrogate a person who is an employee of a nonpublic agency that only provides non-educational care for the child and meets the standards in items 2 and 3 above.

A person assigned as a surrogate may not be an employee of a public agency that is involved in the education or care of the child. A person who otherwise qualifies to be a surrogate parent

under this section is not an employee of the district solely because he or she is paid by the district to serve as a surrogate parent.

The surrogate parent may represent the child is all matters relating to the identification, evaluation and educational placement of the child, and the provision of a free appropriate public education (FAPE) to the child.

Transfer of Parental Rights at Age of Majority

When a student receiving special education and related services reaches age 18, the rights given to his or her parents now are provided to the student.
Some special provisions apply for situations when the student is not able to make decisions on their own behalf.

A State may provide that when a child with a disability reaches the age of majority under State law that applies to all children (except for a child with a disability who has been determined to be incompetent under State law), the district shall provide any notice required under special education to both the individual and the parents. All other rights accorded to parents under Part B of the IDEA transfer to the child at that time. All rights accorded to parents under Part B of the IDEA transfer to children who are incarcerated in an adult or juvenile, State, or local correctional institution.

Whenever a State transfers rights under special education, the district shall notify the individual and the parents of the transfer of rights.

If under State law, a state has the mechanism to determine that a child with a disability upon reaching the age of majority under state law that applies to all children and has not been determined incompetent under state law, is determined not to have the ability to provide informed consent with respect to the educational program of the student, the State shall establish procedures for appointing the parent or if the parent is not available another appropriate individual, to represent the educational interests of the student throughout the student's eligibility under Part B of the IDEA.

Sources for You to Contact for Additional Assistance in Understanding Your Rights:

Department of Education
Special Education Programs
700 Governors Drive
Pierre, SD 57501-2291
voice - (605) 773-3678
fax - (605) 773-3782

South Dakota Advocacy Services
221 South Central
Pierre, SD 57501
1-800-658-4782 (voice/TTY) or (605) 224-8294

South Dakota Parent Connection
3701 W. 49th Street, Suite 200B

Sioux Falls, SD 57106
1-800-640-4553